

Ch. 20 :- Sexual Harassment of women at workplace (Prevention, Prohibition and redressal) Act, 2013

- Sexual harassment of women at workplace is a serious concern to humanity.
- Sexual harassment ~~result~~ results in violation of women rights under Articles 14 and 15 of the Constitution of India.
- Sexual harassment of women at workplace was very first time recognized in judgement of Vishaka V. State of Rajasthan [Vishaka judgement]

Defination :-

- It includes unwelcomed sexually determined behaviour,
- physical contact & advances,
- demand or request for sexual favours,
- sexually coloured remarks,
- Showing pornography,
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Objective :- To prevent and protect women against workplace sexual harassment.

- Most common forms of inappropriate behaviour.

1) Quid pro quo - When supervisor or employer demands for sexual favour from a women worker in return for some type of job benefit.

2) Hostile work environment - Creating offensive working environment and humiliating treatment which would affect her health or safety.

- Applicability -

- It is applicable to both organized and unorganized sectors (self-employed or having less than 10 workers).

- It applies to government bodies, private & public sector organisations, non-governmental organisations, hospitals and nursing homes, educational institutes, sport institutions and also applies to dwelling place or house.

- * Aggrieved women :-

- a women relating to any workplace, of any age ~~with~~ whether employed or not, who alleges to have been any act of sexual harassment by respondent.

- women relating to any dwelling place of any age who is employed in such dwelling place or house.

* Complaint Committee

i) Internal complaint committee (ICC)

It is required to set up Internal complaint committee where 10 or more workers are employed. It is set up by or made by the employer of an organisation.

• ICC shall consist of following members :-

i) A presiding officer who must be a woman employed senior level. If senior level woman employee is not available then presiding officer should be nominated from other offices of workplace.

ii) It should contain at least two members who is committed to cause of women or who have experience in social work and have legal knowledge.

iii) ICC should contain one external member who is familiar with issues of sexual harassment.

iv) At least one-half of members of committee shall be women.

• Tenure :- Every member of committee and Presiding officer shall be appointed for 3 years from the date of their nomination by employer.

- Fees :- The employer should pay fees to member appointed from non-governmental organisations for holding the proceedings of internal committee as may be prescribed by him.

- If presiding officer or any member of committee, contravenes provisions of act or convicted for an offence or injury and found guilty in disciplinary proceedings or abused his position shall be removed from the committee.

2) Local Complaint Committee (LCC).

- Government is required to set up Local Complaint Committee to investigate sexual harassment cases in unorganized sector.

- It is constituted where establishment having less than 10 employees or complaint is against employer.

- Sexual harassment of domestic workers or complaint is against the employer or the third party, who is not employee LCC has special relevance.

i) Notification of district officer - (Section 5)

- Appropriate government should appoint District Magistrate or the collector or Deputy collector as a District officer for every district to exercise powers of this act.

ii] Constitution and jurisdiction of Local Committee.

Section 6 :- • Every district officer shall constitute the "Local Committee" to receive the complaints of sexual harassment.

- The District officer shall appoint one nodal officer in every block, taluka and tehsil in rural or urban ~~as~~ areas to receive and forward complaints to Local committee within 7 days.

iii] Composition, tenure and other terms and conditions of Local committee.

Section 7 :- The local committee should consists of following members :- nominated

i] Chairperson shall be ~~nominated~~ by women in field of social work or committed to cause.

ii] One member nominated by womens in block, taluka or tehsil or ward in district.

iii] Two members, atleast one of them should be women or who is familiar to issues or who is from NGO as may be prescribed.

- Local committee's members should have knowledge of law and at least one of the nominees is from SC/ST/OBC or minority category.

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* Complaint :-

Section 9 :- • An aggrieved woman can file written complaint to Internal Complaint Committee (ICC) or Local Complaint Committee (LCC) within 3 months from date of last incident.

- If an aggrieved woman is unable to file complaint because of her physical or mental incapability or death, then her legal heirs or other persons can file complaint to LCC or ICC on behalf of her.

* Conciliation :- ~~see~~

Section 10 - It is provided that no monetary settlement can be made as basis of conciliation.

- Before or after inquiry aggrieved women can take steps to settle matter between her and respondent.

- If settlement has arrived then Internal committee or Local committee shall record the settlement and forward to the employer or District officer.

* Domestic worker :- Domestic worker means women who is employed in household but doesnot include family member of employer.

* Inquiry Into Complaint :-

Section 11 - Internal Complaint Committee or Local Complaint Committee shall make inquiry into the complaint and in case of domestic worker ICC or LCC shall forward complaint to the police within 7 days.

• ICC and LCC shall have powers while inquiring into complaint of sexual harassment -

- Summoning and enforcing the attendance of a person and examining him on oath,

- can require the discovery and documents of production,

- and any other matter which may be prescribed.

• Such inquiry should be completed within 90 days.

• If aggrieved women is not happy with the recommendation of ICC or LCC then she may prefer an appeal to the court within 90 days.

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Duties of employer. -

i) It is duty of employer to provide safe working environment for every working women in organisation.

ii) Display at any conspicuous place and consequences of sexual harassment in the workplace.

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iii) To organise workshops and awareness programmes at regular intervals to inform the employees of with the provisions of this act.

iv) It is duty of employer to provide necessary facilities to Internal committee or Local Committee.

v) Assist in attendance of respondent before ICC or LCC.

vi) Employer should made available all required information to LCC or ICC.

vii) Providing assistance to women if she chooses to file complaint of offense under Indian Penal Code, 1860.

viii) To take initiate actions under Indian Penal code 1860 or any other law against perpetrator.

ix) It is duty of employer to treat sexual harassment as misconduct and take appropriate actions against it.

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* Duties of District Officer. (Section 20)

- District officer shall make necessary measures to promote awareness about women rights and sexual harassment.
- District officer shall monitor the timely submission of reports furnished by LCC.

* Committee to submit annual report -

- Internal committee or Local committee should report all cases in year and forward reports to District officer and employer.
- District officer should transfer all reports in brief to state government.

* Employer to include ^{information} annual report

The employer shall include number of cases filed and their disposal in a annual report, and transfer it to district officer and District officer should transfer brief annual report to state government.

Appropriate government shall monitor and maintain data on the number of cases filed and disposed with respect to all cases of sexual harassment.

* Appropriate government to take measures to publicise the act.

Appropriate government shall develop relevant information education, and organise awareness programmes to advance understanding of public of the provisions of this act.

Appropriate government should protect women against sexual harassment of women at workplace.

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Workplace has been defined as private sector organisation, private venture, undertaking, enterprise, institution, society, trust, NGO, unit or service provider and places visited by employee including transportation.

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In case of Saurabh Kumar Malik v. Controller and Auditor General of India.

Respondent was accused of sexual harassment of senior women officer at official mess where women were residing. It was agreed by respondent that it is not a sexual harassment as misconduct took place which is not a workplace and no favour could be extracted as complainant is senior. Delhi court held that official mess may come under workplace.